IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL ST.NO.29051 OF 2004

Mary Joy Pawar ...Appellant

V/s.

Shri Ashok Ram ...Respondent

Ms Trupti Govil for the Appellant
Mr.Vishal Kasbekar i/b Jeevan S. Goge for
the Respondent.

CORAM: A.S. OKA,VACATION JUDGE
DATED: NOVEMBER 16,2004

P. C.:

1. Admit. The learned Counsel for the Respondent waives service. By consent the Appeal is taken up for final hearing immediately.

2. By the impugned Judgment and order the suit filed by the Appellant-Plaintiff has been dismissed by the learned Trial Judge by invoking provisions of Rule 4 of Order XV of the Code of Civil Procedure, 1908. The learned Counsel for the Respondent fairly stated that the Respondent has no objection if the impugned Judgment and Order is set aside and the suit is restored and sent back to the Trial Court for hearing afresh. He also fairly stated that the interim order dated 15th October 2003 passed by this Court which was operating

during the pendency of the suit may also be continued. He, however, submitted that with a view to take undue advantage of the interim order the Appellant-Plaintiff is trying to delay the hearing of the suit.

3. In view of the submissions made by the learned Counsel for the Respondent the Appeal is disposed of by passing the following order :

i) Appeal is allowed with no order as to costs.

ii) The impugned Judgment and Order dated 5th October 2003 passed by the learned Trial Judge is quashed and set aside. S.C.Suit No.2375 of 2003 is restored to the file of the learned Trial Judge.

iii) Parties are directed to appear before the learned Trial Judge on 30th November 2004 at 11.00 a.m. fixing the schedule of hearing.

iv) Both the parties are directed to cooperate with the learned Trial Judge for disposing of the suit as per the direction given by this Court by order dated 2nd December 2003 in Appeal from Order No.694 of 2003. It is made clear that the

Appellant-Plaintiff shall not seek adjournments on any unreasonable ground.

v) It will be open for the Petitioner to challenge the order dated 5th October 2003 passed by the learned Trial Judge on Application at Exh.4 by filing appropriate proceeding.

vi) Interim order which was operating during the pendency of the suit shall continue to operate till the final disposal of the suit.

vii) All questions on merit are kept open.

viii) Parties to act upon an ordinary copy of this order.

JUDGE.